

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM R. BELL and U.S. POSTAL SERVICE,
POST OFFICE, Washington, D.C.

*Docket No. 96-2096; Submitted on the Record;
Issued September 22, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for reconsideration under 5 U.S.C. § 8128(a) on the grounds that the request was not timely filed pursuant to 20 C.F.R. § 10.138(b)(2) and failed to present clear evidence of error.

On December 20, 1977 appellant, then a 50-year-old mail handler, fell off a vehicle as it was being lifted by a crane. His right foot became caught between the chain and the floor of the vehicle. The Office accepted his claim for a rotator impingement syndrome of the right shoulder, and appellant received appropriate compensation. Appellant stopped work on December 21, 1977 and lost time from work until March 27, 1978. Appellant returned to regular duty on March 28, 1978, but stopped again due to a recurrence on December 9, 1978. Appellant has not since returned to duty at the employing establishment.

Based on appellant's partial disability, the employing establishment offered appellant the position of modified distribution clerk to start on September 30, 1985. Appellant retained counsel and asserted that he had a work-related emotional condition which prevented him from accepting the job offer. By decision dated January 24, 1995, the Office denied appellant's emotional claim on the grounds that the weight of the medical evidence did not establish a causal relationship between his employment injury of December 20, 1977 and the claimed psychiatric condition and disability. By letters received by the Office on January 24, 1996, sent by facsimile machine that date and hand delivered by a messenger that date, appellant requested reconsideration and submitted duplicate and new evidence in support thereof. By decision dated March 27, 1996, the Office denied appellant's request for reconsideration on the grounds that his request was untimely and lacking clear evidence of error.

The Board has carefully reviewed the case record in the present appeal and finds that appellant's request for reconsideration, received January 24, 1996, was timely.

Under section 8128(a) of the Federal Employees' Compensation Act,¹ the Office has the discretion to reopen a case for review on the merits, on its own motion or on application by the claimant. The Office must exercise this discretion in accordance with section 10.138(b) of the implementing federal regulations² which provides guidelines for the Office in determining whether application for reconsideration is sufficient to warrant a merit review; that section also provides that "the Office will not review ... a decision denying or terminating a benefit unless the application is filed within one year of the date of that decision."³ In *Leon D. Faidley, Jr.*,⁴ the Board held that the imposition of the one-year time limitation period for filing an application for review was not an abuse of discretionary authority granted the Office under section 8128(a) of the Act.

With regard to when the one-year time limitation period begins to run, the Office's procedure manual provides:

"The one-year [time limitation] period for requesting reconsideration begins on the date of the original [Office] decision. However, a right to reconsideration within the one year accompanies any subsequent merit decision on the issues. This includes any hearing or review of the written decision, any denial of modification following reconsideration, and decision by the Employees' Compensation Appeals Board, but does not include prerecoupment hearing/review decisions."⁵

The Office issued its last decision "denying or terminating benefits," *i.e.*, a merit decision on January 24, 1995. In its decision denying appellant's request for reconsideration, the Office noted that it received appellant's reconsideration request and accompanying new evidence on January 24, 1996. In computing a time period the date of the event from which the designated period of time begins to run shall not be included while the last day of the period so computed

¹ 5 U.S.C. § 8128(a).

² 20 C.F.R. § 10.138(b).

³ 20 C.F.R. § 10.138(b)(2).

⁴ 41 ECAB 104 (1989).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602(3)(a) (May 1991).

shall be included unless it is a Saturday, a Sunday, or a legal holiday.⁶ Therefore, the one-year time period following the January 24, 1995 decision began running on the day after the decision, January 25, 1995, and the last day would be January 24, 1996. Therefore, the January 24, 1996 reconsideration request and the accompanying evidence were submitted within one year of the January 24, 1995 decision. Since the January 24, 1996 reconsideration request was timely, the Office must evaluate the reconsideration request under the appropriate standard.⁷ Accordingly, the case will be remanded to the Office for proper consideration of appellant's timely request for reconsideration. After such further development as it deems necessary, the Office should issue an appropriate decision.

The decision of the Office of Workers' Compensation Programs dated March 27, 1996 is set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Dated, Washington, D.C.
September 22, 1998

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁶ See *Marguerite J. Dvorak*, 33 ECAB 1682 (1982); see also FECA Program Memorandum No. 250 (January 29, 1979).

⁷ See 20 C.F.R. § 10.138(b)(i-iii); *Robbin Bills*, 45 ECAB 784 (1994).